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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JERMAINE DEVON WATKINS,

10 Petitioner,

11 v.

12 PATRICK GLEBE,

13 Respondent.

CASE NO. C08-0618RAJ

ORDER

14
15 **I. INTRODUCTION**

16 This matter comes before the court on Petitioner's motion (Dkt. # 24) for a
17 certificate of appealability under 28 U.S.C. § 2253. Petitioner seeks to appeal the court's
18 November 21, 2008 order denying his 28 U.S.C. § 2254 habeas corpus petition.

19 **II. BACKGROUND & ANALYSIS**

20 A habeas petitioner can appeal the denial of a § 2254 petition only after obtaining
21 a "certificate of appealability." 28 U.S.C. § 2253(c). The Ninth Circuit has held that a
22 United States District Court may issue a certificate of appealability. *United States v.*
23 *Asrar*, 116 F.3d 1268, 1269 (9th Cir. 1997). A court may issue a certificate of
24 appealability only if the "applicant has made a substantial showing of the denial of a
25 constitutional right." 28 U.S.C. § 2253(c)(2). The Supreme Court has elaborated that an
26 applicant must show that "reasonable jurists could debate whether . . . the petition should
27 have been resolved in a different manner or that the issues presented were adequate to

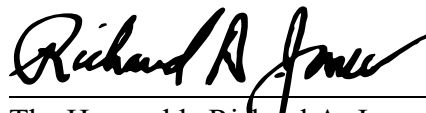
1 deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484
2 (2000) (internal quotations omitted). The decision whether to issue a certificate of
3 appealability does not depend on the court’s assessment of the applicant’s chances for
4 success on appeal, but whether the appeal would even raise material and debatable
5 questions. *Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003) (courts must focus on “the
6 debatability of the underlying constitutional claim, not the resolution of that debate.”).

7 The court has reviewed the record in this matter, and finds that none of the issues
8 that Petitioner raised in his habeas petition present legal questions over which
9 “reasonable jurists could debate.” The court dismissed Petitioner’s claims with prejudice
10 by adopting United States Magistrate Judge Mary Alice Theiler’s Report and
11 Recommendation (“R&R”). *See* Order (Dkt. # 22). Petitioner sought relief from
12 convictions on four counts of first degree rape of a child. Judge Theiler recommended
13 dismissal of Petitioner’s habeas petition because (1) Petitioner procedurally defaulted on
14 his first, third, and fourth claims for relief, and failed to show that “cause and prejudice”
15 exist to excuse his default, and (2) Petitioner’s second claim for relief did not present a
16 cognizable federal habeas claim. *See* R&R (Dkt. # 18) at 6-10. The court reiterates its
17 agreement with Judge Theiler’s analysis, and finds that Petitioner’s appeal would not
18 raise material or debatable questions.

19 III. CONCLUSION

20 For the foregoing reasons, the application for a certificate of appealability (Dkt. #
21 24) is DENIED.

22 DATED this 16th day of January, 2009.

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24 
25 The Honorable Richard A. Jones
26 United States District Judge
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